

DAC
TO

944-003.180



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of :
Jukka-Pekka Vihmallo, et al :
Serial No. 10/656,888 : Examiner: Thanh Duc Vo
Filed: September 5, 2003 : Group Art Unit: 2189
For: MEMORY WEAR LEVELING

Director of the Technology Center 2100
Mr. Jack Harvey
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO WITHDRAW FINALITY UNDER 37 CFR 1.181

Dear Mr. Harvey:

In response to the Final Office Action of
October 31, 2007 and telephone interview with the Examiners
Donald Sparks and Thanh Duc Vo on November 20, 2007, please
withdraw the finality of the Office Action of
October 31, 2007 and evaluate the submitted amendment after
final on the merits. The reasons are provided below.

*****If any fee and/or extension is required in addition to any enclosed herewith, please charge Account
No. 23-0442.**

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. § 1.8(a))

I hereby certify that this correspondence is, on the date shown below, being:

MAILING

- ☒ Deposited with the United States Postal
Service with sufficient postage as first class
Mail in an envelope addressed to the
Commissioner for Patents, PO Box 1450,
Alexandria, VA 22313-1450.

FACSIMILE

- ☐ Transmitted by facsimile to the U.S. Patent and
Trademark Office.

Date: December 7, 2007

Signature

Melissa L. Parise

(type or print name of person certifying)

Explanation of Reasons for Withdrawing Finality

The above reference case has been prosecuted for a long time and went through 6 Office Actions on the Merits and two RCEs. The applicant is of opinion that the arguments presented by the Examiner Vo in these 6 Office Actions were not clear and were focused primarily on terminology used (e.g., interpretations of "triggering signal") and not on the substance. The applicant tried to accommodate unreasonable Examiner's rejections by numerous amendments presented primarily for clarification of the language which made the claims of the present invention even less clear relative to the originally submitted claims. The Examiner Vo was not receptive to the Applicant's arguments and did not try to understand the invention and the meaning of the terminology used based on the terms described in the specification. For example, during the first telephone interview conducted on May 30, 2007, the Examiner Vo explained in length why he could not accept "every time" added in claim 1 (and other independent claims) as a distinguishing feature from the quoted prior art but preliminary approved the applicant's proposed amendment on the phone to clarify the situation, but in the subsequent Office Action of July 12, 2007 rejected the added amendment anyway.

The last telephone interview with the Examiners Donald Sparks and Thanh Duc Vo was performed on November 20, 2007. Prior this interview (on November 15, 2007) the Examiner Vo called the Applicant and asked about the arguments to be presented during the Interview. The applicant gave a full explanation during that preliminary discussion, but the Examiner Vo did not comment nor presented any arguments but

asked to send proposed agenda and proposed amended claims which was done by the applicant on November 19, 2007. During the interview with the Examiners Sparks and Vo on November 20, 2007 the applicant again presented the same arguments, and in response to these arguments both Examiner Vo and Examiner Spark did presented any objections. Instead, the Examiner Vo presented a new evidence related to figure 2 and col. 5 lines 1-14 of the reference of Ban (US patent 6,732, 221) related to the deterministic process which was not previously presented in any of the Office Actions. In all previous rejections the Examiner Vo quoted col. 5, lines 29-39 of Ban et al related to a random process, thus changing the arguments after almost two years of prosecution.

The applicant brought the objection to this change of circumstances and the Examiner Sparks agreed that this is not quite right, i.e., the burden of proof is on the USPTO to present accurate arguments to justify the rejections and that the applicant can ask to vacate the final rejection by petition under 37 CFR 1.181, which is the purpose of this submission.

The applicant was further surprised by the interview summary dated November 28, 2007 which is not quite accurate. For example, prior to the interview the applicant presented a new claim 1 (attached herein) which does not have "every time" or "detects triggering signal" language quoted by the Examiner in the Interview summary. But even if this language is used (for the sake of argument only) the applicant is of opinion that the Examiner Vo may be lacking a fundamental knowledge about deterministic and random processes (which can be found in an appropriate text

book or on the Internet) and keep repeating the arguments all over again interpreting the terminology used in the claims not in light of the specification but in light of his imagination.

Furthermore, the applicant presents a new set of claims in Amendment E submitted herein considering new arguments presented by the Examiner Vo during the Interview of November 20, 2007. The claims are based on the terminology defined in the specification of the originally filed patent. If these new arguments (presented by the Examiner Vo during the Interview of November 20, 2007) were presented earlier during the prosecution, the Applicant would submit this amendment long time ago eliminating this long prosecution and now "irrelevant" dispute about the difference between the random and deterministic processes.

In light of the above circumstances, the applicant kindly requests to remove the finality for the prosecution in the above case and evaluate submitted Amendment E on the merits. Consideration and allowance are respectively requested.

Respectfully submitted,



Anatoly Frenkel
Agent for the Applicant
Registration No. 54,106

WARE, FRESSOLA, VAN DER SLUYS
& ADOLPHSON LLP
755 Main Street, P.O. Box 224
Monroe, Connecticut 06468
(203) 261-1234